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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 DONALD JONES and ROYA REZAI,

9 Plaintiffs,

v.

10 NATIONAL RAILROAD PASSENGER
11 CORPORATION d/b/a AMTRAK,

12 Defendant.

CASE NO. C18-5062 BHS

ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

13 This matter comes before the Court on Defendant National Railroad Passenger
14 Corporation d/b/a Amtrak's ("Amtrak") motion for summary judgment on punitive
15 damages and consumer protection act claim. Dkt. 24. The Court has considered the
16 pleadings filed in support of and in opposition to the motion and the remainder of the file
17 and hereby grants in part and denies in part the motion for the reasons stated herein.

18 **I. PROCEDURAL HISTORY**

19 On January 16, 2018, Plaintiffs Daniel Jones and Roya Rezai ("Plaintiffs") filed a
20 complaint against Amtrak in Pierce County Superior Court for the State of Washington
21 for damages sustained when Amtrak Train 501 derailed near DuPont, Washington. Dkt.
22 1-2. Plaintiffs assert a negligence claim and a claim for violation of Washington's

1 Consumer Protection Act (“CPA”), RCW Chapter 19.86, and request actual damages,
2 punitive damages, and injunctive relief. *Id.*

3 On January 24, 2018, Amtrak removed the matter to this Court. Dkt. 1.

4 On August 9, 2019, the Court granted Amtrak’s motion for summary judgment on
5 punitive damages in a related case, *Wilmotte v. Nat’l R.R. Passenger Corp.*, C18-
6 0086BHS, 2019 WL 3767133 (W.D. Wash. Aug. 9, 2019), and granted in part and denied
7 in part Amtrak’s motion for summary judgment on a CPA claim in another related case,
8 *Harris v. Nat’l R.R. Passenger Corp.*, C18-134BHS, 2019 WL 3767140 (W.D. Wash.
9 Aug. 9, 2019).

10 On September 11, 2019, Amtrak filed the instant motion for summary judgment
11 on Plaintiffs’ request for punitive damages and CPA claim. Dkt. 24. On September 30,
12 2019, Plaintiffs responded. Dkt. 29.

13 On October 1, 2019, the Court granted in part and denied in part Amtrak’s motion
14 for summary judgment in a third related case, *Garza v. Nat’l R.R. Passenger Corp.*, C18-
15 5106 BHS, 2019 WL 4849489 (W.D. Wash. Oct. 1, 2019).

16 On October 4, 2019, Amtrak replied to Plaintiffs’ response. Dkt. 32.

17 **II. FACTUAL BACKGROUND**

18 The majority of the general facts relevant to this motion are set forth in the Court’s
19 previous orders in the related cases. *See Garza*, 2019 WL 4849489; *Wilmotte*, 2019 WL
20 3767133; *Harris*, 2019 WL 3767140. Specifically relevant to Plaintiffs, the Court only
21 notes that similar to the plaintiff in *Garza*, Plaintiffs have “failed to provide any evidence
22 that [they] will ever ride Amtrak in the future or [have] a reasonable fear that if [they do]

1 ride Amtrak in the future, the ride will result in personal injuries.” *Garza*, 2019 WL
2 4849489 at *7. Other than that failure to submit facts, the Court finds no need to recite
3 additional facts to resolve the issues in the instant motion.

4 **III. DISCUSSION**

5 **A. Summary Judgment Standard**

6 Summary judgment is proper only if the pleadings, the discovery and disclosure
7 materials on file, and any affidavits show that there is no genuine issue as to any material
8 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).
9 The moving party is entitled to judgment as a matter of law when the nonmoving party
10 fails to make a sufficient showing on an essential element of a claim in the case on which
11 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317,
12 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,
13 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*
14 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must
15 present specific, significant probative evidence, not simply “some metaphysical doubt”).
16 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists
17 if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or
18 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477
19 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d
20 626, 630 (9th Cir. 1987).

21 The determination of the existence of a material fact is often a close question. The
22 Court must consider the substantive evidentiary burden that the nonmoving party must

1 meet at trial—e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477
2 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual
3 issues of controversy in favor of the nonmoving party only when the facts specifically
4 attested by that party contradict facts specifically attested by the moving party. The
5 nonmoving party may not merely state that it will discredit the moving party’s evidence
6 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*
7 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,
8 nonspecific statements in affidavits are not sufficient, and missing facts will not be
9 presumed. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888–89 (1990).

10 **B. Punitive Damages**

11 In this case, the parties’ arguments are almost identical to those the parties
12 presented in *Garza*. As such, the Court reaches the same conclusion—that Plaintiffs have
13 “failed to overcome the presumption that Washington law applies to [their] personal
14 injury claims.” *Garza*, 2019 WL 4849489 at *4. Therefore, the Court grants Amtrak’s
15 motion on Plaintiffs’ request for punitive damages.

16 **C. CPA**

17 In this case, the parties’ arguments are almost identical to those the parties
18 presented in *Garza*. Although Amtrak used its reply to present new arguments on this
19 claim essentially seeking reconsideration of conclusions reached as to preemption in the
20 *Garza* order, the new arguments are not only improper in a reply but also are
21 unpersuasive. As such the Court concludes that Amtrak did not waive the affirmative
22 defense of preemption, Plaintiffs’ CPA claim is not preempted, Plaintiffs have identified

1 material questions of fact for trial on the claim, and Plaintiffs lack standing to seek an
2 injunction. Accordingly, the Court grants in part and denies in part Amtrak's motion on
3 this claim.

4 **IV. ORDER**

5 Therefore, it is hereby **ORDERED** that Amtrak's motion for summary judgment
6 on punitive damages and consumer protection act claim, Dkt. 24, is **GRANTED in part**
7 and **DENIED in part** as stated herein.

8 Dated this 7th day of November, 2019.

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BENJAMIN H. SETTLE
United States District Judge